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|-----------------|-------------|----------------------|---------------------|------------------|
| 09/889,834      | 11/28/2001  | Ralph Barclay Ross   | CAF-28502/03        | 1383             |

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EXAMINER

GORDON, STEPHEN T

ART UNIT PAPER NUMBER

3612

DATE MAILED: 07/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                                |                           |                            |                  |
|--------------------------------|---------------------------|----------------------------|------------------|
| <h1>Office Action Summary</h1> | Application<br>09/889,834 | Applicant(s)<br>Ress et al |                  |
|                                | Examiner<br>Gordon        | Art Unit<br>3612           | Confirmation No. |

- The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address -

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 5-23-03
- ☐ This action is FINAL. ☒ This action is non-final.
- ☐ Since this application is in condition for allowance except for the formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-26 is/are pending in this application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-17 & 19-26 is/are rejected.
- ☒ Claim(s) 18 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved or ☐ disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are ☐ accepted or ☐ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d) or (f).
- ☒ All ☐ Some\* ☐ None of the:
- ☒ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \*Certified copies not received:
- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- ☐ The translation of the foreign language provisional application has been received.
- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 612
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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### **DETAILED ACTION**

1. Regarding the restriction/election requirement and applicant's remarks directed thereto in paper no. 12, applicant has canceled the non-elected claims withdrawn via the restriction requirement. Applicant traverses the election of species requirement. After further review and in view of applicant's remarks of paper no. 12, the election of species portion of the requirement is withdrawn.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: figure 1 - labels 9, 24, and 33; figure 2 - labels 8, 12, 13, 14, 15, 16, 20, 21, 30, and 33; figure 3 - labels 30 and 34; figure 4a - labels 25 and 26; figure 4b - labels 26, 27, 30, and 31; figure 5 - labels 23c, 23d, and 23e; figure 6 - labels 8, 16, and 20; and figure 8 - label 23k. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. Claims 4, 7-10, 12-15, and 21-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 4, lines 1-2 are somewhat confusing, and "a" of line 1 could be replaced with -- one said-- to clarify the claim in this regard.

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Re claim 7, the recited two frames apparently constitute a double inclusion of the frame of the base claim. Additionally, "each end" lacks clear antecedent basis.

Re claim 8, "the frames" lacks clear antecedent basis in view of the problem noted above regarding claim 7. Note a similar confusing term appears in claim 9.

Re claim 10, "the connecting member" and "the two end frames" lacks clear antecedent basis.

Re claim 12, "the constrained elongated members" lacks clear antecedent basis and could be written as --the elongate members when engaged-- as best understood.

Re claim 13, "the packing member ends" lacks clear antecedent basis. Note the term additionally appears in claim 14.

Re claim 21, the recited deformable elements apparently constitutes a double inclusion of the deformable portion of the base claim.

Re claim 22, "the deformable element" lacks clear antecedent basis in view of the problems noted regarding claim 21.

Re claim 23, "the elastomer jacket" should apparently be --the elastomeric jacket-- for consistency/clarity. Note similar confusing terms appear in claims 24, 25, and 26.

With additional regard to claim 24, lines 2-4 are generally awkward and confusing. If --of said lobes being-- were inserted before "on" of line 2 and if --and-- were inserted after "jacket" of line 3, the claim would be clear in this regard as best understood.

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With additional regard to claim 26, the phrase "compressive...force" is not wholly understood. For example, where is the force from? What is the recited lateral motion?? Etc.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 5-6, 9, 12-13, 16-17, and 19-23, as best understood, are rejected under 35

U.S.C. 102(b) as being anticipated by Robertson.

Robertson teaches a retaining apparatus including a frame 2 with side members (i.e. the upward end bosses of element 2 and/or the outermost screws 6), a packing member 1 with a resilient deformable portion (rubber part 4), and retaining means (i.e. at least the centermost bolt 6) as broadly claimed.

Re claim 13, the packing member is deemed to engage profiles as broadly claimed.

Re claim 22, element 4 is deemed to define a jacket as broadly claimed.

Re claim 23, note the vertically extending portions/components of elements 4.

6. Claims 1-3, 6-13, and 16-17, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Appelberg.

Appelberg teaches a retaining apparatus including a frame 9 with a base 10 and side members 11,12, a packing member (i.e. one of straps 13) with a deformable portion as broadly

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claimed, and retaining means (i.e. retention structure/characteristic of frame and straps 13) as broadly claimed.

Re claim 8, frames 9 are joined by member 8.

Re claim 9, at least the side plates of element 8 define connector members as broadly claimed.

Re claim 10, see elements 16,17.

Re claim 11, the packing member can be positioned at different heights.

Re claim 13, the packing member is deemed to engage profiles as broadly claimed.

Re claims 16-17, the retaining means is deemed configured as broadly claimed.

7. Claims 1, 3, 4, 5, and 19-23, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Tetyak.

Tetyak teaches a retaining apparatus including a frame (lower element 10) with side members (i.e. the upward end bosses of element 10), a packing member 34 with a resilient deformable portion, and retaining means (i.e. at least the binding straps) as broadly claimed.

Re claim 4, the packing members are positioned as recited.

Re claim 13, the packing member is deemed to engage profiles as broadly claimed.

Re claim 22, element 4 is deemed to define a jacket as broadly claimed.

Re claim 23, note the vertically extending portions/components of elements 34.

8. Claim 4, as best understood, is alternatively rejected under 35 U.S.C. 102(b) as being anticipated by Chambers.

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Chambers teaches a retaining apparatus including a frame with side members 3, packing members (the excelsior straps) with a resilient deformable portion, and retaining means (i.e. at least the restraining structure across the top of the pipe stack) as broadly claimed.

Re claim 4, the packing members are positioned as recited.

9. Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 14-15, and 24-26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note at least Richards et al teaches a retaining system utilizing multiple packing members.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556.

stg

June 27, 2003

 6/27/03  
STEPHEN T. GORDON  
PRIMARY EXAMINER